IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 597 OF 1998

The Commissioner of Income Tax ... Applicant.
vs.
M/s. Aditya Construction &
Developers Pvt. Ltd. .... Respondent.

CORAM: V.C. Daga & A.S. Aguiar JJ.
Date: 14 /07 /2005

Mr. A. S. Rao
i/b. Mr. H. D. Rathod for applicant

P.C.

1. The reference in this case has arisen out of the order of the Tribunal in ITA 4189/BOM/1984 for Assessment year 1982-83 which came to be registered as Reference no. 597/98. It is, thus, clear that the reference is pending before this court for the past 7 years.

2. Till today no evidence / material is produced on record by the Revenue to show that any steps were taken by them to serve the notice of this reference on the respondent - assessee.

3. Even today when the matter is called out for hearing of the Reference made u/s. 256(1) of the I.T. Act. Learned counsel for the Revenue prayed for adjournment for effecting service since nobody is present on behalf of the respondent for want of notice.

4. We are not inclined to grant any more adjournment in this case because of the peculiar facts of the case on hand.

5. This matter was on board before the previous Division Bench on 29.3.05 to which one of us (Daga J) was a party. Notice was issued to the respondent returnable after two weeks. The IT Department was permitted to serve the respondent by RPAD in addition to personal service. Department was directed to file affidavit of service within two weeks from the date of the order. The reference was adjourned for two weeks.

6. After two weeks again this matter appeared on board before the same bench on 12th April, 2005. Again time to effect service was sought and it was granted. Time was extended by another 4 weeks. Thereafter again on 6.6.05 matter was placed before

the Division Bench, to which one of us (Aguiar J.) was a party. On being asked further 4 weeks' time to effect service was granted. Thereafter again the matter came on board on 14.6.05 before the same Bench. Again one more week was allowed at the request of the learned counsel appearing for the revenue to effect service.

7. On either of the dates referred to above, no material was produced before the court to show as to whether any steps were taken to serve the respondent so as to show compliance of the order of the court dated 29.3.05.

8. Needless to mention that this very same matter again appeared on our Board on 29.6.05, again two weeks time was granted to effect service. After expiry of two weeks' time, this matter is again placed before us, today, for necessary orders. Even today no material is placed before us to show any steps having been taken to effect service on the respondent. In the absence of the respondent the matter cannot be proceeded with. The hearing of the reference in the absence of the respondent would clearly be clearly in breach of principles of natural justice even though the issue / question involved is

prima facie covered by the Apex Court judgment in favour of the assessee.

9. In the above circumstances considering the inaction, reluctance, negligence and attitude on the part of the respondent - Revenue not to comply with the orders of the court and to avoid to effect service of the reference proceedings on the respondent, we have no option but refuse to grant adjournment, especially considering the non-cooperative and defiant attitude adopted by the department.

10. Inspite of more than 6 adjournments, ranging for a period more than three months, the department could not take steps even to post one notice to the respondent by RPAD. Atleast, no material is produced before us to show compliance of our orders passed from time to time.

11. Mr. Rao, learned counsel for respondent - revenue on being asked , expressed his inability to give any single reason for non-compliance of the

order of this court, directing service on the respondent. The officers from the Law and Judiciary posted at Mumbai and the Commissioner of Income-tax (J) were also noticed, to bring this state of affairs to their notice. They did nothing except blaming each other and higher ups. It is really surprising that the Revenue itself is not interested in protecting interest of the Revenue.

12. In the above view of the matter, we have no option but to refuse to grant adjournment and also refuse to answer the reference. Reference is thus returned unanswered without any adjudication.

13. While returning this reference unanswered even though Apex Court judgment, prima facie, is in favour of the Revenue) we are conscious of the fact that it will cause tremendous Revenue loss to the Revenue. This is not an isolated case. There are many more such cases running into more than three figures. We can do no better than directing the registry to send a copy of this order for information to the Principal Secretary, Ministry of Law & Justice, Central Secretariat, New Delhi, with a copy to Shri Berjinder

Singh, Chairman Central Board of Direct Taxes, North Block, New Delhi 110 001, (whose address is furnished to us by Shri K. M. Prasad, Commissioner of Income Tax (J) , Mumbai) so as to bring it to their notice that the manner in which their department at Bombay is functioning.

14. Reference stands disposed of with costs quantified in the sum of Rs.5000/- to be deposited with the Legal authority of the High Court within 3 weeks from today.

(V.C. Daga J)

(A.S.Aguiar J.)